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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1389 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANDURANG V KULKARNI

Versus

LIC

Appearance:

MR NR SHAHANI for Petitioners

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 21/07/2000

C.A.V. JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order made by Life Insurance Corporation of India on 20th June 1988, vide Annexure 'A' refusing to release stagnation increment of the

petitioner No.1 due on 1.6.1988. The petitioner No.1 was working as Assistant with the respondent Life Insurance Corporation (hereinafter referred to as the Corporation). The petitioner No.2 is a registered trade union. The petitioner No.1 is stated to be the General Secretary of the said union and also Vice President of All India Life Insurance Employees Association.

2. It is contended that this Court should entertain the petition in view of the fact that a protected workman was protected by a Division Bench of this Court in Special Civil Application No. 2717/82 by an interim relief, wherein the Court granted interim relief subject to outcome of the final order. However, the matter could not be disposed of finally on merits as the petitioner of that petition unfortunately expired. Therefore, in the absence of any decision on merits, learned advocate is absolutely unjustified in requesting the Court to render decision following the interim order in Spl. C.A. No.2717/82.

3. Learned advocate Mr. Sahani submitted that the petitioner joined service with the respondent Corporation on 31st March 1967 and has been working without any promotion till the date of filing of the petition, i.e. 14th February 1989. The petitioner was allowed to cross the efficiency bar w.e.f. 1.5.1981. It is submitted that the petitioner has a spotless career and therefore he ought to have been given the benefits.

4. The terms and conditions of the services of the employees serving the respondent Corporation are governed by the Life Insurance Corporation of India (Staff) Regulation, 1960 which has been framed in exercise of the powers vested in the Corporation under clauses (b) and (bb) of sub-section (2) of Section 49 of the Life Insurance Corporation Act, 1956. The Central Government has also approved the said Regulation framed by the Corporation. The Corporation has also issued instructions from time to time for implementation of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms & Conditions of Service) Rules 1985 which are also framed under the Act. Rule 4 of the said 1985 Rules provides for scales of pay of Class III employees and Rule 7 provides for addition to basic pay after reaching maximum of scale. The said Rule 7 reads as under:

> 7. Addition to basic pay after reaching maximum of scale :- Subject to the work record being found satisfactory -

(a). an employee ;-

(i) in the scale of Assistant or Stenographer in Class III; or

(ii) in any of the scales in Class IV, who has reached the maximum of the scale of pay applicable to him, may be granted for every two completed years of service after reaching such maximum, an additional increment equal to the last increment drawn by him in the scale of pay, subject to a maximum of three such increments;

(b). an employee in the scale of Record Clerk, Section Head or High Grade Assistant, who has reached the maximum of the scale, may be granted for every three completed years of service after reaching such maximum, an additional increment equal to the last increment drawn by him in the scale of pay subject to a maximum of two such increments:

Provided that where an employee is not granted additional increment referred to in clause (a) or clause (b) at the end of two years or as the case may be, three years of service, from the date of his last increment or the last additional increment, his case shall fall due for review in each calendar year in the month following that in which he completes twelve months of service in that year, so long as he has not been allowed the increment, and if it is decided to allow the increment, it shall take effect from the first of the month in which the review has fallen due in the calendar year in which the decision is taken to allow the increment.

Explanation :- For the purpose of this rule, the competent authority to allow the additional increment shall be the authority competent to allow the employee to cross the efficiency bar as specified in Schedule IV to the Staff Regulations.

5. Mr. Sahani submitted that a special confidential report in the usual form is required to be called for during the month in which the stagnation increment falls due. He further submitted that this Special report shall

be in respect of the period from 1st January of the year in which grant of such stagnation increment falls to be considered to the due date of such stagnation increment. He further submitted that as per clause 3 (c) of Circular No. 3550/ASP/76 dated 20th September 1976, the appointing authority has to take a decision on the basis of last three years annual confidential report but where the stagnation increment falls due on 1st January itself, the appointing authority shall take a decision on the basis of the last two annual confidential reports only and no special confidential report need be called for. Mr. Sahani submitted that if the records of the employee is found to be satisfactory and the employee has reached the maximum of scale of pay applicable to him, then the despite usage of the word 'may', it should be considered as 'shall' and stagnation increment should be granted for every two completed years of service after reaching such maximum and additional increments only when the last increment drawn by him in the scale of pay subject to a maximum of three of such increments. It is therefore submitted that after reaching maximum scale, as no further promotion is provided, the Corporation has framed the scheme with a view to see that there is efficiency. It is required to be noted that the appointing authority has to consider the reports and leave particulars. The authority has to render a decision in writing either to allow the employee to enjoy stagnation increment or to defer it for one full year. An employee securing on an average less than 24 marks out of 40 marks for the confidential reports for a period of two years immediately proceeding the due date of the stagnation increment is not to be granted the stagnation increment. The decision of the appointing authority has to be conveyed in writing preferably within two months from the due date of the stagnation increment. However, as per the instructions, it is not necessary to communicate the reasons for not allowing the stagnation increment to an employee concerned.

6. From the instructions and the circulars, it appears that only if an employee works so as to secure more than 24 marks, he will be given benefit of additional increments. If the competent authority considering the confidential report is satisfied that the employee has not put in work of a particular standard as prescribed, then the authority may not grant the benefit. Merely because a person was allowed to cross efficiency bar in past does not mean that thereafter it is to be presumed by the Court that he has worked to the satisfaction of the employer and that his confidential reports are upto the mark. After permitting the employee

to cross the efficiency bar, it is always not necessary that he has continued to work with the same efficiency with which he was working earlier.

7. It is required to be noted that against the decision rendered by the authority, the 1960 Regulations provides for an appellate forum. Regulation 40 provides for right of appeal to the appellate authority specified in Schedule I against the order imposing upon an employee any of the penalties specified under Regulation 39. It also provides that an appeal against an order passed under Regulation 36 is also maintainable. So far as the present case is concerned, Rule 47 provides for appeal, which reads as under:-

47. Appeals against other Orders:
(1). An employee may appeal against an order which -
(a). denies or varies to his disadvantage his salary or other conditions of service as regulated by any orders, regulations, rules or agreements.
or
(b). interprets to his disadvantage the provisions of any such orders, regulations, rules or agreements
to the Corporation if the order is passed by the authority which made the orders or regulations or rules or agreements, as the case may be, or by any authority to which such authority is subordinate, and to the authority which made such orders or regulations or rules or agreements if the order is passed by any other authority.
(2). xxx xxx xxx xxx xxx
(3). xxx xxx xxx xxx xxx
(4). In case of an appeal under this regulation, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

7.1 There is also a provision for Review under clause 48.

7.2 Thus, the Regulation itself provides for appellate forum as well as for review of the orders.

8. The Supreme Court in case of DURGA PRASAD v/s. NAVEEN CHANDRA REPORTED in (1996) 3 SCC 300 has held that the order dismissing the application was not appellable either under section 96 or under order 43 rule 1 read with section 104 of the Civil Procedure Code but still

revision under section 115 of Civil Procedure Code would be maintainable and whether the order could be revised or not was a matter to be considered by the High Court on merits. The Supreme Court pointed out that instead of availing that remedy, invoking jurisdiction under Article 226 was not warranted. The procedure prescribed under the rules and regulations cannot be bypassed by availing of the remedy under Article 226. In case of SHEELA DEVI vs. JASPAL SINGH reported in (1999) 1 SCC 209 the Supreme Court held that the High Court wrongly exercised its writ jurisdiction when an alternative statutory remedy of revision was available. No reason was given by the respondent for not availing of the remedy of revision under section 18 of the U.P. Urban Buildings (Regulation of letting, rent and eviction) Act, 1972. The respondent straightaway filed a writ petition before the High Court where the High Court has re-examined the facts. Thus when an alternative remedy is provided under a statute, it becomes the duty of the aggrieved party to approach that forum instead of rushing to the High Court by filing a petition under Article 226 of the Constitution of India. In the instant case the petitioner could have called upon the appellate authority to decide its appeal under the aforesaid provision. Thus, though alternative remedy was available to the petitioner, the petitioner has not chosen to avail of that remedy, and therefore this petition must be dismissed on this ground alone.

9. Thus, alternative remedy is available to the petitioner, and the petitioner ought to have approached that forum. The appellate authority would be in a better position to appreciate the facts and procedure. Learned advocate is not right in saying that no appellate forum is provided.

10. On behalf of the Corporation it is pointed out that in accordance with the circular, the appointing authority has to consider the report and has to take a decision in the matter. It is pointed out that the petitioner failed to secure the average of 24/40 marks for the period of two years preceding the stagnation increment. It is in view of this the Corporation did not grant stagnation increment. It is also pointed out on behalf of the respondent Corporation that Administrative Officer of the Corporation called the petitioner personally when he made a representation on 16.8.1988 and he was informed about the decision and to make a representation to the higher authority. However, the petitioner has not made any representation to the higher authority and has rushed to this Court. Thus, the officer also pointed out to the petitioner that a remedy

is available under the Regulations, but without exhausting that remedy, the petitioner has rushed to this Court. It is not the case that the petitioner was not aware of this Rules and Regulations because he claims to be the General Secretary and Vice President of trade union and it is expected of the office bearers of Unions that they should now the rules and regulations.

11. Thus, the petitioner, knowing full well that alternative remedy is available, has rushed to this Court. This petition, therefore, should be dismissed on this ground alone, and is hereby dismissed accordingly. It is clarified that this petition is not disposed of on merits. It is directed that if the petitioner moves the appellate authority within a period of 15 days from today, the appellate authority shall consider his case on merits without raising any objection that the same is delayed and shall dispose of the appeal on merits within a period of three months from the date of filing of the appeal, after giving full opportunity of hearing to the petitioner.

12. This petition stands dismissed with the aforesaid directions. Rule is discharged; no order as to costs.

csm./ (B.C. PATEL, J.)